

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Hideo SUGIMORI

Serial No. 10/690,584

Group Art Unit: 3624

Confirmation No. 6740

Filed: October 23, 2003

Examiner: Mansfield, Thomas L.

For: OPERATIONS MANAGEMENT POLICY DISTRIBUTING METHOD, OPERATIONS
MANAGEMENT POLICY DISTRIBUTING APPARATUS, AND OPERATIONS
MANAGEMENT POLICY DISTRIBUTING PROGRAM

PETITION REQUESTING WITHDRAWAL OF RESTRICTION

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby petitions the Commissioner to direct the Primary Examiner of Art Unit 3624 to withdraw the restriction of claim 11 withdrawn from consideration in the outstanding Office Action mailed July 24, 2009. On or about August 19, 2008, Applicants filed an Amendment adding new claim 11. On or about December 9, 2008, the Office issued an Action in which claim 11 was withdrawn from consideration as based on a constructive election. Applicant filed an Amendment on or about March 9, 2009 with a response to the construction election/restriction of claim 11 requesting reconsideration of the withdrawal; the Examiner refused to withdraw the constructive election/restriction and finally withdrew claim 11 from consideration.

In the Office Action mailed July 24, 2009, the Examiner finally withdrew claim 11 from consideration as being directed to a non-elected invention. In addressing Applicant's previous arguments filed on March 9, 2009 on pages 6-8, the Examiner has misinterpreted MPEP 821.03 and Applicant respectfully requests review of the restriction requirement and rejoinder of claim 11 under MPEP 821.04(b). In the Office Action, the Examiner merely reiterated its arguments in its Office Action of December 9, 2008 and did not address Applicant's arguments with respect to dependent claim 4. In particular, the Office Action asserted "subcombination II has separate utility such as the manager is provided with a policy rating based upon a number of clients (now

amended as “computers”) operating under the corresponding policy, overall operation time of the corresponding policy among the plurality of clients (now amended as “computers”), and a number of applications running on the client (now amended as “computers”) to be managed, and does not require the sending back the created policy list to a manager as required in subcombination I.”

However, in this case, claim 11 is neither independent nor distinct from the previously presented claims. According to MPEP § 802.01, the term “independent” means that there is no disclosed relationship between the two or more inventions claimed, that is, they are unconnected in design, operation, and effect. For example, a process and an apparatus incapable of being used in practicing the process are independent inventions. See also MPEP § 806.06 and § 808.01.

Claim 1 recites “upon receiving selection information indicating the selection by the manager of at least one operations management method of the computer to be managed from said created method list, retrieving from said database, the operations management method specified by said selection information; transmitting the retrieved operations management method of the computer to be managed to the computer to be managed.”

Claim 11 recites “providing the created method lists to a manager of the computer network system for a selection of one method for each computer to be managed, wherein the manager is provided with a method rating based upon a number of computers operating under the corresponding method, overall operation time of the corresponding method among the plurality of computers, and a number of applications of the corresponding method; upon receiving the selection from the manager, retrieving from the database, the operations management method specified by the selection; and sending the retrieved operations management method to each computer to be managed.”

Claim 1 and 11 recite very similar features except that claim 11 recites an additional claim limitation related to dependent claim 4 with additional details referring to the information which is provided to the manager to use to make a selection of one method for the computer to be managed. Claim 4 recites “said usage frequency comprises: the number of references, the operating time and the number of applications of each of the operations management methods of the computer to be managed applied to said computer to be managed.” Claim 11 recites “the manager is provided with a method rating based upon a number of computers operating under the corresponding method, overall operation time of the corresponding method among the plurality of computers, and a number of applications of the corresponding method.”

According to MPEP § 802.01, related inventions are distinct if the inventions *as claimed* are not connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is PATENTABLE (novel and nonobvious) OVER THE OTHER (though they may each be unpatentable over the prior art). See MPEP § 806.05(c) (combination and subcombination) and § 806.05(j) (related products or related processes) for examples of when a two-way test is required for distinctness.

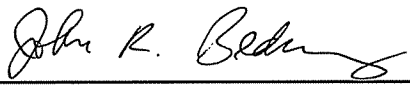
Both claim 1 and 11 are connected in design, operation, and effect because both claim 1 and 11 are related to a manager managing a network of computers and the manager's selection of a management method which is to be sent to a computer to be managed. Claim 11 simply contains an additional limitation that is not found in claim 1, which is similar to the claim limitation found in dependent claim 4 and is discussed in paragraph [0036] of the Application.

Accordingly, the direction of the Examiner to withdraw the restriction of claim 11 is respectfully requested.

Respectfully submitted,

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Date: 10-26-09

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